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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,350	03/06/2002	Stefan Wilhelm	LINDE-581	7250

23599 7590 02/10/2005

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EXAMINER

CIRIC, LJILJANA V

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/091,350

Applicant(s)

WILHELM ET AL.

Examiner

Ljiljana (Lil) V. Ciric

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2004 and 01 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 24 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-8 and 11-22 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 2,9,10 and 23 is/are objected to.
- 8) ☒ Claim(s) 24 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. This Office action is in response to the replies filed on July 13, 2004 and on November 1, 2004.
2. Claims 1 through 24 remain in the application, of which claims 18 through 24 are new.

### ***Response to Arguments***

3. Applicant's arguments, filed on July 13, 2004 with respect to the rejections as cited in the previous Office action have been fully considered and, except as noted below, are persuasive.

Applicant's argument that the rejection of the claims based on the Walter et al. reference should be withdrawn since the Walter et al. reference is in German and not in English is not in the least persuasive, particularly since (a) the Walter et al. reference was cited by applicants without a German-to-English translation having been provided; and, even more importantly, (b) the Walter et al. reference is in German, the official language of Germany, the same language in which the priority documents of the instant application have been filed, and presumably the native language of the applicant. Nevertheless, the various rejections of the claims as cited in the previous Office action have been withdrawn in view of the remaining arguments presented by applicant upon reconsideration.

### ***Drawings***

4. The drawings were received on November 1, 2004. These drawings are approved.

### ***Allowable Subject Matter***

5. Claims 1, 3 through 8, and 11 through 22 are allowed.
6. Claims 2, 9, 10, and 23 contain allowable subject matter but are objected to due to various informalities as noted below.

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7. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

*Ex parte Quayle*

8. This application is thus in condition for allowance except for the following formal matters:

*(a) Election/Restrictions*

9. Newly submitted claim 24 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim 24 is directed to a process for providing heat exchange whereas the originally presented claims were all drawn to a heat exchanger. The originally claimed apparatus and the newly recited process are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus as claimed, unlike the newly recited process as claimed, can be used to practice a process which does not necessarily include introducing at least two fluids into a heat exchanger wherein the at least two fluids undergo indirect heat exchange; nothing in the original apparatus claims requires that the fluids flowing through the heat exchanger be in an indirect heat exchange relationship to each other. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 24 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Claim 24 should be cancelled by applicant in response to this Office action.

*(b) Specification*

10. The abstract of the disclosure is objected to because the abstract does not avoid using phrases which can be implied, i.e., "The invention relates to" [Note that is accepted practice to merely omit such

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language and have the first sentence of the abstract be an incomplete sentence for conciseness. ]

Correction is required. See MPEP § 608.01(b).

*(c) Claim Objections*

11. Claims 2 and 10 are objected to because of the following informalities: “having” in line 2 of claim 2 should be replaced with “has”. Appropriate correction is required.

12. Claims 9 and 23 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. While each of claims 9 and 23 appears to be in dependent claim, depending from claim 1 and claim 19, respectively, each of these claims fails to further limit the parent claim as required. Each of claims 9 and 23 are drawn to the combination of a fractionation plant and the inventive heat exchanger, and is thus broader than the corresponding base claim it seeks dependence from.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

*Conclusion*

13. This application is in condition for allowance except for the formal matters noted above in detail.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (571) 272-4909.


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While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene, can be reached at (571) 272-4930.

lvc

February 7, 2005

  
LJILJANA V. CIRIC  
PRIMARY EXAMINER  
ART UNIT 3753